

WCA Rule Advisory Committee 1-31-08 Meeting

Draft Boundary or Type and TEP Procedures Sections

8420.0225 WETLAND BOUNDARY OR TYPE DETERMINATIONS.

The delineation of wetland boundaries must be completed in accordance with the United States Army Corps of Engineers Wetland Delineation Manual (January 1987) and subsequent updates. Applications for approval of wetland boundary or type must include information in accordance with wetland delineation report submittal guidelines issued by the board. The wetland type must be determined according to "Wetland Plants and Plant Communities of Minnesota and Wisconsin" (S. Eggers and D. Reed, 1997 as modified by the board – U.S. Army Corps of Engineers' Wetland Mitigation Memorandum of Understanding (May 2007)).

~~—A. A landowner may apply for a wetland boundary or type determination from the local government unit. The landowner applying for the determination is responsible for submitting proof necessary to make the determination, including, but not limited to, wetland delineation field data, observation well data, topographic mapping, survey mapping, and information regarding soils, vegetation, hydrology, and groundwater both within and outside of the proposed wetland boundary.~~

~~—B. A local government unit that receives an application under item A may seek the advice of the technical evaluation panel and, if necessary, expand the technical evaluation panel.~~

~~—C. The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99. Within ten working days of the decision, the local government unit decision must be sent to the landowner, members of the technical evaluation panel, the watershed district or watershed management organization if there is one, the commissioner of natural resources, and individual members of the public who request a copy.~~

~~—D. The local government unit decision is valid for three years unless the technical evaluation panel determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have been sufficient to alter the wetland boundary or type.~~

Parts A-D above have been relocated as part of the rule reorganization effort. They will be located in the application section. Part D will also be included in the discussion regarding the sunset of decisions for all applications.

STAT AUTH: MS s [14.386](#); L 2000 c 382 s 20; [103B.3355](#); [103G.2242](#)

HIST: 25 SR 152; 27 SR 135

8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.

For each local government unit, there is a technical evaluation panel consisting of at least three persons: a technical professional employee of the board, a technical professional employee of the soil and water conservation district of the county in which the activity is occurring, and a technical professional with expertise in wetland-water resource management appointed by the local government unit. For projects affecting public waters, ~~or~~ public waters wetlands or ~~affecting wetlands adjacent to the public waters or public waters wetlands~~ wetlands within the shoreland wetland protection zone, the ~~technical evaluation~~ panel shall also include a technical professional employee of the Department of Natural Resources. ~~For purposes of this section, "adjacent" means within the shoreland wetland protection zone or 1,000 feet, whichever is less.~~ The local government unit shall coordinate the panel. The purpose of the panel is to provide findings and

recommendations to the local government unit. Two members of the panel must be knowledgeable and trained in applying methodologies of the United States Army Corps of Engineers Wetland Delineation Manual” (January 1987) and “Wetland Plant Community Types” (Eggers and Reed, 1997), “Wetlands of the United States” (United States Fish and Wildlife Service Circular 39, 1971 edition), and “Classification of Wetlands and Deepwater Habitats of the United States” (Cowardin, et al., 1979 edition), including updates, supplementary guidance, or replacements of these methods provided by the board. The panel shall also be knowledgeable and trained in evaluation of wetland functions and the resulting public values. The technical evaluation panel may ~~seek~~ invite ~~advise from others with~~ additional expertise to help the panel in its work.

The changes above are proposed to define the role and incorporate earlier modifications to the TEP structure and “at least three persons” has been deleted to further clarify the technical make-up of the panel and provide consistency with statute. Clarifying language is added for DNR participation by referring to the shoreland wetland protection zone definition. The Eggers & Reed wetland classification system has been added to reflect current changes in the Exempt Rule. Circular 39 and the Classification of Wetlands and Deep water Habitats are in statute however, so there is a possibility this may require a change.

The panel, ~~if requested to do so by the local government unit, the landowner, or a member of the technical evaluation panel,~~ shall make technical findings and recommendations regarding wetland functions and the resulting public values; ~~direct and indirect impacts; location, size, and type for replacement plans; and wetland banking plans; and~~ exemption, no-loss, wetland boundary or type, and sequencing requests; and for comprehensive wetland protection and management plans and wetland ordinances; ~~if requested to do so by the local government unit, the landowner, or a member of the technical evaluation panel.~~

The above wording has been revised to be cleaner. Review of direct & indirect impacts has been included as a required duty of the TEP.

The panel may review replacement plans and ~~wetland~~ banking plans, ~~and~~ exemption ~~determinations,~~ no-loss ~~determinations,~~ ~~wetland~~ boundary or type requests, and sequencing requests, and recommend to the local government unit either approval, approval with changes or conditions, or ~~rejection-denial.~~ The panel also shall review applications for replacement of public road projects as provided in 8420.0544, and banking projects as provided in 8420.0740. When a technical evaluation panel makes a recommendation, the local government unit must consider the recommendation of the ~~technical evaluation~~ panel in its approval or denial of a plan or determination. The panel shall make no findings or recommendations without at least one member having made an on-site inspection. Panel findings and recommendations must be documented and endorsed by a majority of the members. If the local government unit does not agree with the technical evaluation panel's findings and recommendation, the detailed reasons for the disagreement must be part of the local government unit's record of decision.

The current rule requirement for review of road and bank applications was added to this section for clarity. In the above paragraph, restating the type of application is redundant.

Applicants ~~for replacement plans, wetland banking plans and exemption, no loss, and wetland boundary or type, and sequencing determinations~~ must cooperate in providing local government unit staff and members of the technical evaluation panel and their designated experts with access to proposed project sites for investigation. Such investigations shall be preceded by notice to the

landowner or designated agent, unless prior approval has been granted. If an applicant refuses to allow access, the local government unit may deny an application.

~~—If the local government unit has a comprehensive wetland protection and management plan that delineates location, size, and type for all wetlands, approved by the technical evaluation panel, and subsequently incorporated into local ordinance, then the local government unit can make determinations without a recommendation from the technical evaluation panel.~~

The deletion above is proposed because TEP recommendations are generally not required for LGU decisions, therefore there is no need to specifically note it for Comprehensive Wetland Protection and Management Plan areas. This will remove unnecessary wording from the rule.

If requested by the local government unit, ~~enforcement authority~~, the landowner, or a member of the technical evaluation panel, the panel ~~shall~~ will answer technical questions ~~or participate in the concerning~~ monitoring of replacement wetlands according to parts ~~8420.0290, 8420.0600~~ to 8420.0630, and ~~shall similarly participate in the monitoring of~~ banked wetlands according to parts 8420.0700 to 8420.0760.

The edits above are proposed to clarify that the TEP is not responsible for monitoring, but rather to answer technical questions and provide recommendations regarding monitoring. Enforcement has also been added due to their role in enforcing replacement requirements.

STAT AUTH: MS s [14.06](#); [103B.101](#); [103B.3355](#); [103G.2242](#)

HIST: 18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135